

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office Action, and these remarks provided in response thereto.

Claims 1–34 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 34–68 of co-pending U.S. Patent Application No. 09/804,848. Applicant elects not to presently file a terminal disclaimer pending the indication of otherwise allowable claims by the Examiner.

Claims 26–30 and 32 were rejected under 35 U.S.C. 112, second paragraph, for depending on a canceled claim. The claims have been amended, making the rejection moot.

Claims 22, 24–25, 31 and 33–34 were further rejected under 35 U.S.C. 103(a) as being unpatentable over Feng et al. (WO 01/87014). For the following reasons, the rejection is respectfully traversed.

Feng does not teach using a wire and the user's body both as part of an interconnection as recited in the claims. In fact, Feng teaches away from any such an interconnection, because Feng teaches that it is desirable to use wireless interconnect technology for the connection, or a pair of wires. Feng suggests using RF, or the wearer's body for the connection. Alternatively, Feng teaches the use of a pair of wires for such connections. However, nowhere does the reference suggest using just a single wire and the user's body for the interconnection.

The Examiner admits as much in the action, when the Examiner states that it is well-known to use a wire to "partially forming the communication link" and that it would thus be obvious to do so, and thus the Examiner appears to be asserting Official Notice of the feature. However, applicant disputes any such assertion. Taking "official notice" requires that facts outside of the record be capable of instant and unquestionable demonstration as being

'well-known' in the art (see MPEP §2144.03). However, the Examiner has apparently attempted, but failed, to find a reference which teaches the cited elements of the claims. Hence, these elements are not likely to be "notoriously well known" as required (id.). Accordingly, applicant hereby traverses the official notice and claim that the feature is "well known" and formally requests, as required by the MPEP (id.), that the Examiner locate a reference in support of his position that a using a single wire for an interconnect in an application such as the invention is well-known.

Consequently, applicant asserts that the Examiner's rejection of the claims based on the feature being "well-known" is herein traversed, and should be withdrawn, absent the Examiner finding a reference supporting the notoriously "well known" nature of the claimed feature. Accordingly, the rejected claims are patentable over the reference.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

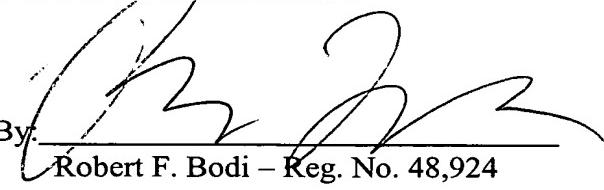
Appln. No. 10/054,479
Amdt. dated April 19, 2006
Reply to Office Action dated December 19, 2005

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 34351.

Respectfully submitted,

PEARNE & GORDON LLP

By:


Robert F. Bodi – Reg. No. 48,924

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700

Date: April 19, 2006